

Stephen A. Roberts (SBN 17019200)  
Robert P. Franke (SBN 07371200)  
Robert Tyler (SBN 24009347)  
Duane J. Brescia (SBN 24025265)  
STRASBURGER & PRICE, LLP  
600 Congress, Suite 1600  
Austin, Texas 78701  
Tel. (512) 499-3600 / Fax (512) 499-3643  
[stephen.roberts@strasburger.com](mailto:stephen.roberts@strasburger.com)  
[bob.franke@strasburger.com](mailto:bob.franke@strasburger.com)  
[robert.tyler@strasburger.com](mailto:robert.tyler@strasburger.com)  
[duane.brescia@strasburger.com](mailto:duane.brescia@strasburger.com)

**ATTORNEYS FOR DEBTOR SUPERIOR AIR PARTS, INC.**

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

**IN RE:**

**SUPERIOR AIR PARTS, INC.,**

**Debtor.**

§  
§  
§  
§  
§  
§

**Case No. 08-36705**

**Chapter 11**

**DEBTOR'S OBJECTION TO MOTION OF MALONEY, BEAN, HORN &  
HULL, P.C. FOR PROTECTION AND/OR TO ESTABLISH ESCROW ACCOUNT**  
[Docket No. 311]

TO: THE HONORABLE BARBARA J. HOUSER,  
UNITED STATES BANKRUPTCY JUDGE:

Superior Air Parts, Inc. ("Superior" or "Debtor") files this Objection to Motion of  
Maloney, Bean, Horn, & Hull, P.C for Protection and/or to Establish Escrow Account  
[Docket No. 311] and respectfully states as follows:

**I.**  
**BACKGROUND**

1. On July 17, 2009, Maloney, Bean, Horn & Hull, P.C. ("MBHH") filed its  
Objection To Superior Air Parts, Inc.'s Second Amended Disclosure Statement and,

Alternatively, Motion for Protection and/or to Establish Escrow Account (“Motion”). This document was filed and docketed as both an objection to the Debtor’s Second Amended Disclosure Statement [Docket No. 310] and as an affirmative motion for relief [Docket No. 311]. At the hearing on the Debtor’s Second Amended Disclosure Statement, MBHH withdrew its objection, but stated in open court that it was maintaining its Motion. Hearing has been set by the Court for September 1, 2009 at 3:30 p.m.

2. In the Motion, MBHH states that it has been Debtor’s product liability counsel for a number of years and is the current counsel of record in 8 pending state-court lawsuits, which were stayed by the bankruptcy filing. Under the applicable insurance policies, the Debtor is responsible for paying the deductible obligation, which can include costs of settlement and defense costs.

3. Of the eight pending lawsuits identified in the Motion, six of the plaintiffs have entered into agreed orders with the Debtor to lift the automatic stay to allow the lawsuit to proceed, provided that the plaintiffs would only seek recovery against the insurance policy. In exchange, each plaintiff voluntarily waived any and all claims against the estate.

4. According to MBHH, it is being harmed because it must maintain the lawsuits “to protect Superior in litigation,” which includes retaining local counsel, but is forced to proceed with the uncertainty as to whether it will be paid for the Debtor’s portion of the defense costs. MBHH is uncertain as to what to do and asked the Court to require the Debtor to put \$175,000 into an escrow account for the anticipated legal fees required to continue forward in their case through the end of September 2009, the

anticipated effective date of the Joint Plan of Reorganization filed by the Debtor and the Committee.

5. The Debtor objects to the affirmative relief requested by MBHH.

**II.**  
**ARGUMENT**

6. Maloney Bean does not have standing to raise this issue and is not being harmed. The fundamental problem with MBHH's position is that it is not being harmed, and therefore, has no standing. MMBH is really representing the insurers at this point because the plaintiffs have waived their claims against the estate. The risk of loss is only upon the insurers, not MMBH or the Debtor. The Debtor does not have to proceed in the lawsuits. The only liability for the six waived claims is the insurer's liability above the Debtor's deductibles. The Debtor does not have to pay for that. The maximum liability for the Debtor in the two remaining cases is for the deductible if the policies are assumed, which is a claim in the bankruptcy.

7. MMBH falsely raises the concern that there is risk to the Debtor if the insurers decline coverage based upon the Debtor's failure to pay. That risk is actually being borne by the plaintiffs when they waived their claims. MMBH also asserts that it is required to "take action to protect Superior in the ongoing litigation without any agreement from any party that MBHH will be paid." See Motion, para. 12. To the contrary, no further action is required by the Debtor in these cases.

8. MBHH simply has a pre-petition claim against the Debtor for unreimbursed defense costs. If the proposed purchaser under Debtor's Joint Plan, Brantly, assumes the insurance policies at confirmation, it will have to make the insurers whole or reach a

compromise, and maybe MMBH can be paid through the insurers. However, that is not a debt or risk of the Debtor to MBHH.

9. Maloney Bean has not been approved by the Court as professionals for the estate. MMBH has previously been advised by Debtor's bankruptcy counsel that they have no authority to represent the Debtor or retain professionals on behalf of the Debtor. Neither can MMBH look to payment of the Debtor without being approved as counsel by the Court. There is no retention agreement entered into between the Debtor and MBHH during this bankruptcy. Therefore, the relief requested in the Motion is improper and in violation of the Bankruptcy Code.

10. The estate is not harmed by not defending product liability lawsuits where the plaintiffs have waived their claims against the estate. Ultimately, MBHH has failed to explain how the Debtor is harmed by not defending claims where the plaintiff has waived all claims against the Debtor other than from proceeds of insurance. If the insurers not to protect themselves by exercising their option under the policy endorsement to fund the defense costs, and then look to the Debtor for reimbursement, they are putting themselves at risk. It is not a responsibility of the Debtor. If the insurers think that Superior's non-payment provides a defense to coverage, then they can choose not to defend, allow the plaintiffs to take default judgments and then deny coverage. The plaintiffs are at risk in that situation, which is a risk the plaintiffs willingly took when they waived claims against Superior and agreed to only look to insurance.

11. The Debtor has filed a Joint Plan with the Committee that will reimburse the insurers if the plan is confirmed, so the insurers will not be harmed. It is in the insurers' best interest to support the plan because, if no plan is confirmed in this case,

then the insurers will have an unsecured claim against the estate for those fees along with all of the other creditors.

12. The Debtor is prohibited from paying pre-petition claims against the estate. Finally, any claims for payment of professional fees under pre-petition policies are pre-petition claims and the Debtor is prohibited from paying them prior to confirmation of any plan. It is uncertain whether the Motion is seeking reimbursement of per-petition fees as part of the "escrow" deposit requested. If that is the case, the Debtor is prevented from paying them.

WHEREFORE, the Debtor prays that the court deny Maloney, Bean, Horn & Hull, P.C.'s Motion for Protection in its entirety and grant such other and further relief as this Court may deem just and proper.

Respectfully submitted,

/s/ Stephen A. Roberts  
Stephen A. Roberts (SBN 17019200)  
Robert P. Franke (SBN 07371200)  
Duane J. Brescia (SBN 24025265)  
Robert Tyler (SBN 24009347)  
**STRASBURGER & PRICE, LLP**  
600 Congress, Suite 1600  
Austin, Texas 78701  
Tel. (512) 499-3600 / Fax (512) 499-3660  
[stephen.roberts@strasburger.com](mailto:stephen.roberts@strasburger.com)  
[bob.franke@strasburger.com](mailto:bob.franke@strasburger.com)  
[robert.tyler@strasburger.com](mailto:robert.tyler@strasburger.com)  
[duane.brescia@strasburger.com](mailto:duane.brescia@strasburger.com)

**Bankruptcy Attorneys for Debtor Superior  
Air Parts, Inc.**

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the above and foregoing document was served upon the parties on the attached service list via First Class U.S. Mail, postage prepaid August 20, 2009.

/s/ Stephen A. Roberts  
Stephen A. Roberts

Stuart R. Fraenkel  
Kreindler & Kreindler LLP  
707 Wilshire Blvd., Ste 4100  
Los Angeles, CA 90017

Robert F. Hedrick  
Hedrick Smith PLLC  
800 Fifth Avenue, Suite 4000  
Seattle, WA 98104-3179

Michael J. Bailey  
Miller Thompson, LLP  
3000, 700-9<sup>th</sup> Ave. S.W.  
Calgary, Alberta Canada T2P 3N9

Lawrence W. Olesen, Q.C.  
Bryan & Company, LLP  
2600 Manulife Place  
10180-101 Street  
Edmonton, Alberta T5J3Y2

Lisa Lance  
PO Box 595  
Pauls Valley, OK 73075

William O. Angelley  
Kreindler & Kreindler LLP  
707 Wilshire Blvd., Ste 4100  
Los Angeles, CA 90017

Paul Eberly  
414 Sunset Drive  
Gulf Shores, AL 36542

Roch J. Shipley  
Professional Analysis & Consulting  
43W752 US Route 30, Suite 2F  
Sugar Grove, IL 60554

Donald F. Knutson  
Knutson Aviation Services  
2118 N. Tyler, Bldg. B, Ste 102  
Wichita, KS 67212

Eugene Massamillo  
Kaplan, von Ohlen & Massamillo  
555 Fifth Ave., 15<sup>th</sup> Floor  
New York, NY 10017

Nicholas Pantelopoulos  
Kaplan, vonOhlen & Massamillo  
555 Fifth Ave., 15<sup>th</sup> Floor  
New York, NY 10017

Scott V. Goodley  
Baron & Budd, P.C.  
8001 Lemmon Ave., Ste 145  
Dallas, TX 75209-2926

Alan Agee  
Garvin Agee Carlton and Mashburn  
PO Box 10  
Pauls Valley, OK 73075-0010

Kenneth J. Moran  
Martin A. Conn  
Moran Brown  
4110 W. Parham Road  
Richmond, VA 23228

J. Denny Shupe  
Schnader Harrison Segal & Lewis  
1600 Market Street, Ste 3600  
Philadelphia, PA 19103-7286

Dustin A. Turnquist, M.S., P.E.  
Engineering Systems, Inc.  
4775 Centennial Blvd., Ste 106  
Colorado Springs, CO 80919

Keith A Fink & Associates  
S. Keven Steinberg  
Steinberg Law Offices  
11500 W. Olympic Blvd., Ste 316  
Los Angeles, CA 90064

Theilert Aircraft Engines Nieritzstr 14 D-01097 Dresden Germany	Mahle Engine Components 60428 Marine Road Atlantic IA 50022-8291	KS-Pistoes Rodovia Arnald, Julio Mauberg 4000 Disrito Industrial No Nova Odessa SP Brasil CAIZA Postal 91 CEP 13460-000
Aisure Limited Dallas Office 5700 Granite Parkway, #550 Plano, TX 75024-6647	ECK Industries, Inc. 1602 North 8 <sup>th</sup> Street Manitowoc, WI 54221-0967	Mahle Engine Components 14161 Manchester Road Manchester, MO 63011
Crane Cams 2531 Tail Spin Trail Daytona Beach, FL 32128-6743	Corley Gasket Co. 6555 Hunnicut Road Dallas TX 75227	Saturn Fasteners Inc. 425 S. Varney St. Burbank, CA 91502
Champion Aerospace, Inc. 1230 Old Norris Road Liberty, SC 29654-0686	Ohio Gasket & Shim 976 Evans Ave. Akron, OH 44305	Gerhardt Gear 133 East Santa Anita Burbank CA 91502-1926
Automatic Screw Machine 709 2 <sup>nd</sup> Avenue SE Decatur, AL 35601	Helio Precision Products 601 North Skokie Highway Lake Bluff, IL 60044	Knappe & Koester Inc. 18 Bradco Street Keen, NH 3431
Garlock-Metallic Gasket Div 250 Portwall St., Ste. 300 Houston, TX 77029	AOPA Pilot PO Box 973 Frederick, MD 21701	Mahle Engine Components 17226 Industrial HWY Caldwell, OH 43724-9779
Genesee Stamping & Fabricating 1470 Avenue T Grand Prairie, TX 75050-1222	Seal Science 17131 Daimler Irvine, CA 92614-5508	Internal Revenue Service Special Procedures - Insolvency P.O. Box 21126 Philadelphia, PA 19114
Deirdre B. Ruckman/AVCO Gardere Wynne Sewell LLP 1601 Elm Street, Ste. 3000 Dallas, TX 75201	David Childs, Ph.D. Dallas County Tax Assessor/Collector 500 Elm Street, Records Building Dallas, TX 75202	Thielert AG Albert-Einstein-Ring 11 D-22761, Hamburg Germany
Betsy Price, Tax Assessor Collector 100 E. Weatherford PO Box 961018 Fort Worth, TX 76196	Hartford Aircraft Products 94 Old Poquonock Road Bloomfield, CT 06002	Ace Grinding & Machine Company 2020 Winner Street Walled Lake, MI 48390
Lynden International 1800 International Blvd. #800 Seattle, WA 98188	Combustion Technologies, Inc. 1804 Slatesville Road Chatham, VA 24531	Ruhrtaler Gesenkschmiede F.W. Wengler GMBH & Co. KG, Feld Witten, Germany 58456

Chester Salomon Becker, Glynn, Melamed & Muffly LLP 299 Park Avenue New York, NY 10171	City of Coppell/Coppell ISD Mary McGuffey, Tax Assessor Collector PO Box 9478 Coppell, TX 75019	Kent Abercrombie Superior Air Parts, Inc. 621 S. Royal Lane, Suite 100 Coppell, TX 75019-3805
Neil J. Orleans Goins, Underkofler, et al, LLP 1201 Elm Street, Ste. 4800 Dallas, TX 75270	Howard A. Borg/James T. Jacks Ass't US Atty for FAA Burnett Plaza, Suite 1700 801 Cherry Street, Unit 4 Fort Worth, Texas 76102-6882	Laurie A. Spindler Linebarger Goggan et al, LLP 2323 Bryan Street Suite 1600 Dallas, TX 75201
Jeffrey N. Thom, Q.C. Miller Thomson LLP 3000, 700 - 9th Avenue SW Calgary, AB T2P 3V4	Gordon J. Toering <b>WARNER NORCROSS &amp; JUDD LLP</b> 900 Fifth Third Center 111 Lyon Street, NW Grand Rapids, Michigan 49503	Anita F. McMahon 1646 Belmont Ave. Baton Rouge, LA 70808
Michael L. Jones Henry & Jones, LLP 2902 Carlisle Street, Ste. 150 Dallas, TX 75204	LARRY K. HERCULES ATTORNEY AT LAW 1400 Preston Road, Suite 280 Plano, Texas 75093	Gregory B. Gill, Jr. Gill & Gill, S.C. 128 North Durkee St. Appleton, WI 54911
Laura Boyle TW Telecom, Inc. 10475 Park Meadows, Dr. #400 Littleton, CO 80124	Melissa S. Hayward LOCKE LORD BISSELL& LIDDELL LLP 2200 Ross Avenue, Suite 2200 Dallas, Texas 75201 Counsel for the Insurers	Vincent Slusher/J. Seth Moore Beirne Maynard & Parsons, LLP 1700 Pacific Ave., Ste. 4400 Dallas, TX 75201 Attys for Theilert Aircraft Engines GMBH
Mary Frances Durham U.S. Department of Justice Office of the United States Trustee 1100 Commerce Street, Room 976 Dallas, TX 75242	Stefano Gazzola Zanzi, S.p.A. Corso Vercelli, 159 10015 Ivrea, Italy	Piyush Kakar Seal Science Inc. 17131 Daimler Irvine, CA 92614
Jim Griffin Hartford Aircraft Products 94 Old Poquonock Road Bloomfield, CT 06002	Phil Eck Eck Industries, Inc. 1602 North 8th Street Manitowoc, WI 54221-0967	Werner Wilhelm Albus/Valeria de Freitas Mesquita/KSPG Automotive Brazil LTDA Rodovia Arnaldo Julio Mauerbert, n. 4000-Distrito Industrial 01 Nova Odessa- SP Brasil, Caixa Postal 91
Ronald Weaver Avstar 1365 Park Lane South Jupiter, FL 33458	Linda Boyle TW Telecom, Inc. 10475 Park Meadows Dr. #400 Littleton, CO 80124	Susan B. Hersh 12770 Coit Rd. Ste. 1100 Dallas, TX 75251
William G. Burd/Krystina N. Jiron Atkinson & Brownell, PA 2 South Biscayne Blvd., Suite 3750 Miami, FL 33131	David W. Parham, Elliot Schuler & A. Swick Baker & McKenzie LLP 2001 Ross Ave., Suite 2300 Dallas, TX 75201	Timothy S. McFadden LOCKE LORD BISSELL& LIDDELL LLP 111 South Wacker Drive Chicago, IL 60606 Counsel for the Insurers
Billy G. Leonard, Jr. Attorney at Law 1650 W. Virginia Street, Suite 211 McKinney, Texas 75069	Kevin H. Good Conner & Winters LLP 1700 Pacific Avenue Suite 2250 Dallas, Texas 75201	Rosa R. Orenstein LOOPER, REED & McGRAW, P.C. 4100 Thanksgiving Tower 1601 Elm Street Dallas, TX 75201

Kenneth A. Hill  
QUILLING, SELANDER, CUMMISKEY  
& LOWNDS, P.C.  
2001 Bryan Street, Suite 1800  
Dallas, Texas 75201